

### REMARKS

In the Office action claim 19 was indicated as being allowable if rewritten in independent form. The subject matter of claim 19 has been incorporated into claim 16. As such, claim 16 and claims dependent thereon are believed to be in condition for allowance. Likewise, new claims 26 and 36 include subject matter similar to claim 5, which was also indicated as having allowable subject matter. Generally, new claim 36 corresponds to claim 5 if rewritten in independent form. That is, new claim 36 includes the subject matter of claim 5 and additional limitations that are similar to those previously found in claim 11. Thus, new claims 26 and 36 and claims dependent thereon respectively, are also believed to be patentable.

Independent claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Mao in view of Kapoor. Claim 12 calls for an encoder that combines different transmissions, a device that sets a first marker in the transmission, and a counter that tracks the transmission from the point where the first marker was inserted.

In the Office action it is acknowledged that Mao fails to teach a counter for tracking a transmission from the point where the first marker was inserted. Kapoor is relied upon in the Office action for this teaching. As indicated in Kapoor, the congestion controller at one location, such as satellite 20, sets a bit. Paper No. 15, p 3. However, the data packet with the bit set is not counted until it is received at another location, such as satellite 21. *Id.* Thus, if that particular data packet fails to reach the second location, a counter is not incremented.

In contrast, according to some embodiments of the present invention, broadcast details may be obtained at any time. Broadcast details may include how much information has been sent, how much has been received, whether information was lost, and other details. In an embodiment, a bit counter may be provided to count the bits transmitted and elapsed time. That is, in an embodiment, current transmission details may be returned to a broadcast encoder application including details such as a count of bits transmitted and elapsed time.

It is respectfully submitted that the congestion counter of Kapoor that is situated at the node (i.e. satellite 20) that sends a data packet with a congestion indicator bit set has nothing to do with counting the sent data packet. Thus, Kapoor fails to cure the deficiencies of Mao.

Furthermore, even if Kapoor is construed as having the claimed counter, which it does not, there is no suggestion or motivation to modify Mao. For example, Kapoor is directed toward a two-way telephone communication system. 2:22-25 and 54-65. In contrast, Mao's service is directed toward one-way webcasting using a digital TV transport stream. 2:48-49.

Mao does not necessarily view speed and bandwidth as problems due to the (pending) availability of the hybrid fiber-coax infrastructure and digital television. 1:56-65; 2:49-53. Thus, it is respectfully submitted that Mao teaches away from the proposed modification. That is, there is no teaching or suggestion of the desirability to modify Mao especially as Kapoor involves two-way telephone communications and Mao is directed toward one-way digital broadcasts. Accordingly, for at least these reasons, it is submitted that *prima facie* obviousness has not been established with respect to claims 12 and claims dependent thereon.

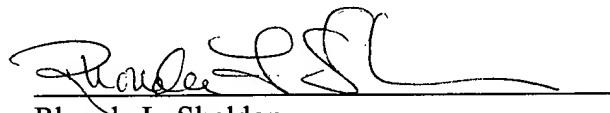
#### **Conclusion**

The application is believed to be in condition for allowance. The Examiner's furtherance toward this end is respectfully requested.

The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (ITL.0083US).

Respectfully submitted,

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